

REMARKS

An Office Action has been issued in the subject application in which claims 1–11 were rejected under 35 U.S.C. § 102. The Office Action was made final. Claims 1 and 8 have been amended to more particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 has been amended to correct a typographical error.

The rejections are traversed hereunder. Reconsideration and reexamination of the subject application as amended and in view of these remarks are respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 1–11 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,701,722 to Franklin et al. Applicant traverses these rejections.

Requirements for Anticipation

The Federal Circuit stated in *W.L. Gore & Associates v. Garlock, Inc.* [721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983)] that an anticipation rejection under 35 U.S.C. § 102 “requires the disclosure of a single prior art reference of each element of the claim under consideration.” It is not enough, however, that the prior art reference disclose all the claimed elements in isolation. Rather, as stated by the Federal Circuit, “[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim” [*Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984)]. Likewise, the Court of Customs and Patent Appeals (CCPA) stated in *In re Wilder* [429 F.2d 447, 166 USPQ 545, 548 (C.C.P.A. 1976)]:

Simply stated, a prior publication or patent description will be considered as anticipatory when its disclosure is at once specific and enabling with regard to the particular subject matter at issue. In effect, a prima facie case is made out whenever a reference is shown to contain a disclosure which is specific as to every critical element of the appealed claims.

In other words, a prima facie case of anticipation is established when the Patent Office provides:

- a) a single reference
- b) that teaches or enables
- c) each of the claimed elements (arranged as in the claim)
- d) expressly or inherently
- e) as interpreted by one of ordinary skill in the art.

If any one of these elements is not present, the prima facie case of anticipation is not established. In the instant case, it is respectfully submitted that the Franklin et al. patent fails to meet these requirements.

The Cited Reference

U.S. Patent No. 5,710,722 to Franklin et al. discloses a palletizer for palletizing and wrapping a load, including arranging products into layers, stacking the layers on a pallet, and wrapping the layers in a plastic film material, to increase the stability of the load (see column 1, lines 8–14). According to Franklin et al.'s palletizer, the following steps are taken to secure a load onto a pallet, layer by layer, with each subsequent layer being wrapped and overlapped to the preceding layer:

- bundles are conveyed into the palletizer through the belt infeed
- the bundles sorted and turned to form the desired layer pattern
- the layers are assembled on an accumulator conveyor
- when stripper plates are closed, the layer is transferred to the stripper plates
- an empty pallet is transferred to a pallet conveyor on a scissor lift
- the pallet and pallet conveyor are raised in position beneath the stripper plates
- the stripper plates open and the first layer is dropped onto the pallet
- the pallet is lowered by the scissor lift a sufficient distance to allow the stripper plates to close
- after the stripper plates are closed, the pallet is raised so that the first layer is immediately below the stripper plates
- a second layer is transferred to the stripper plates
- the stripper plates open and the second layer is deposited on the first layer
- the pallet containing the first and second layers is lowered to allow the stripper plates to close
- once a layer has been lowered completely through the guide plates, it is wrapped
- the pallet is partially wrapped along with the first layer to secure the first layer to the pallet
- the third layer drops onto the pallet
- as the lifts lower, the second layer exits the guide plates is wrapped
- the wrap is applied to the second and additional layers so that it partially overlaps the preceding layer so that a continuous wrap is formed about the load

This process continues until a plurality of layers are loaded and wrapped as a uniform stack with the pallet. (See column 5, line 49, to column 7, line 12, and FIGS. 4 to 10.)

To perform these steps, the palletizer includes the stripper plates 30 for holding a layer of bundles 56. When the stripper plates 30 open, the layer of bundles 56 falls on a pallet 46. A wrapper apparatus 47 then wraps film around the layer of bundles 56 and the pallet 46 to secure the layer to the pallet 46.

As discussed below, the Franklin et al. patent fails to teach or suggest an apparatus for sealing a load placed on a pallet in which a clamping subsystem secures the load independently of the pallet and a film subsystem envelops at least a bottom of the load with the film when the load is secured independently of the pallet by the clamping subsystem.

The Present Invention

The invention as set forth in claim 1 as amended recites a system for enclosing a load with film. The system includes:

- a clamp for engaging the sides of the load ...;
- a rack ... that ... is vertically movable ... ;
- engagement means ... for engaging the sides of the film; and
- sealing means for sealing the sides of the film together

Claims 2–4 depend from claim 1 and respectively recite additional features of the system.

Independent claim 5 sets forth an apparatus for sealing a load placed on a pallet with film. The load has a bottom positioned against the pallet. The apparatus includes:

- a clamping subsystem for securing the load independently of the pallet;
- and
- a film subsystem for enveloping at least the bottom of the load with the film when the load is secured independently of the pallet by the clamping subsystem.

Claims 6–11 depend from claim 5 and respectively recite additional features of the apparatus.

Discussion

Claim 1

Claim 1 has been amended to positively recite each of the steps of the procedure, thereby eliminating the functional language with which the Patent Office is concerned. It is respectfully submitted that claim 1 satisfies the requirements of 35 U.S.C. § 112. It is respectfully submitted that claim 1 is patentable based on the elements of the claim alone, regardless of any patentable weight given to the procedural steps of the claim, as discussed below.

The Franklin et al. patent fails to teach or suggest a number of elements of the system of claim 1, including, for example:

- a clamp for engaging the sides of a load placed on a pallet;
- a clamp for engaging the sides of the load when the pallet is on a platform;
- a rack that is vertically movable between an upper position in which the rack is above the top of the load and a lower position in which the rack is below the bottom of the load when the pallet is disposed on the platform;
- a pair of cross members mounted to the rack such that the cross members are horizontally movable;
- engagement means mounted to the cross members for engaging the sides of the film; and
- sealing means for sealing the sides of the film together;

Based on this enumeration of elements, it is clear that the Franklin et al. patent fails to teach or suggest not only one element but a plurality of elements of claim 1. Accordingly, it is respectfully submitted that the Patent Office has failed to establish a *prima facie* case of anticipation.

Furthermore, the Franklin et al. patent also fails to teach or suggest how to enclose a load with film by following the following procedure:

- the pallet with the load is placed on the platform;
- the sides of the film are engaged with the engagement means when the rack is in the upper position;
- the cross members are moved outwardly to separate the sides of film;

- the rack is moved to the lower position, thereby enveloping the load within the sleeve;
- the load is engaged with the clamp;
- the load is separated from the pallet by lowering the platform;
- the cross members are moved inwardly so that the sides of the film are brought together;
- the sides of film are sealed with the sealing means;
- the sides of the film are disengaged from the engagement means;
- the cross members are moved outwardly; and
- the load is replaced on the pallet.

In sustaining its previous rejection of claim 1, the Patent Office states in the Office Action that Applicant “enumerates each individual facet of the structure.” It is respectfully submitted that this is precisely what Applicant needs to do to establish that the Patent Office has NOT established a *prima facie* case of anticipation. In overcoming an anticipation rejection, the burden is on Applicant to clearly illustrate to the Patent Office that the prior art does not teach or suggest at least one element of the claim. In the instant case, Applicant clearly illustrates—by enumerating each individual facet of the structure—that not only does the prior art fail to teach a single element of claim 1 but that the prior art fails to teach *a plurality of the elements* of claim 1.

Claim 5

The Franklin et al. patent fails to teach or suggest apparatus for sealing a load on a pallet as recited in claim 5. Rather, the Franklin et al. patent teaches how to *secure a load to a pallet*. The load itself is NOT sealed but is rather wrapped with overlapping layers of film to secure the layers of cartons together and to secure the stack of cartons to the pallet (see column 6, lines 55 and 56, and FIGS. 6–10 of the Franklin et al. patent). The objective of the Franklin et al. palletizer is to secure loads *to the pallet itself* for stabilization. Clearly, the absence of any apparatus or methodology for sealing a load renders the anticipation rejections moot.

In addition to failing to teach apparatus for sealing a load, the Franklin et al. patent also fails to teach or suggest apparatus including:

- a clamping subsystem for securing the load independently of the pallet; and
- a film subsystem for enveloping at least the bottom of the load with the film when the load is secured independently of the pallet by the clamping subsystem.

The Franklin et al. patent does not teach or suggest a clamping subsystem that is able to secure a load independently of a pallet. Rather, the Franklin et al. palletizer has stripper plates that release a layer of cartons on to a pallet. In addition, as the Franklin et al. palletizer is not able to secure a load independently of a pallet, it is impossible for the Franklin et al. palletizer to seal at least the bottom of the load with film as accomplished by the film subsystem of claim 5. Rather, the bottom of the load of the Franklin et al. system rests on a pallet, rendering it impossible to seal the bottom of the load. Indeed, there is no sealing over either end of the load with the palletizer of the Franklin et al. patent.

In setting forth the final rejection of the claims, the Office Action fails to address Applicant's arguments made in relation to the limitations of claim 5. Rather, the Office Action is concerned with 35 U.S.C. § 112, ¶ 6, and the semantics of claims 1 and 8. It is noted in passing the claim 8 depends from claim 5. It is also noted that claim 5 does not include any of the type of language that the Office Action focuses on in commenting on claims 1 and 8. As the claims have not been rejected under 35 U.S.C. 112 for indefiniteness, the Patent Office confirms that the subject matter of the invention is indeed definitely recited in claims. Accordingly, it is respectfully requested for the Patent Office to address the specific anticipation rejection under 35 U.S.C. § 102.

Conclusion

In view of the foregoing, it is respectfully submitted that a *prima facie* case of anticipation has not been established by the Patent Office because the Franklin et al. patent does not teach or enable each of the claimed elements (arranged as in the claim), either expressly or inherently, as interpreted by one of ordinary skill in the art. Thus, it is respectfully submitted that the Franklin et al. patent fails to teach or suggest the system of claim 1 and the apparatus of claim 5, and, therefore, that these independent claims are patentable. In addition, for reasons

analogous to those presented above, it is respectfully submitted the Franklin et al. patent also fails to teach or suggest the features of dependent claims 2-4 and 6-11, and, therefore, that these dependent claims are also patentable.

CLOSING REMARKS

It is respectfully submitted that the subject application, including claims 1-11, is in condition for allowance. Confirmation of the allowance is respectfully requested.

The Examiner is invited to contact the undersigned if there are any issues which remain, preventing the allowance of the application.

Respectfully submitted,



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